

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Kevin E. Brehmer et al.

Title: CMOS Sensor With Over-Saturation Abatement

Application No.: 10/053,111 Filing Date: January 17, 2002

Examiner: Quiett, Carramah J. Group Art Unit: 2612

Docket No.: ZRAN.022US0 Conf. No.: 1813

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF FINALITY

Dear Sir:

In the above referenced application, the Official Action mailed on April 19, 2006, was a final Office Action. This finality is respectfully submitted to be in error and it is requested that it be withdrawn.

According to section 706.07(a) of the M.P.E.P., beginning on the first line of the second paragraph, “second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement ...*”[emphasis added]. As noted in the Response to Arguments portion, the Office Action has changed the grounds for rejection of several of the original claims. The Office Action states that this is due to “a typological error” in the previous Office Action and has introduced new grounds in the current Office Action. As the Office Action has introduced new grounds for rejection of original, unamended claims and that this was not based on information submitted in an information disclosure statement, it is respectfully submitted that the finality of the Office Action is premature.

More specifically, with respect to each of independent claims 1, 5, and 10, the Office Action states in the Response to Arguments portion that the cited passage of the Fossum reference for each of these claims was incorrect and then proceeds to issue a new rejection based on another cited passage. Each of claims 1, 5, and 10 is in its original and unamended form. Consequently, they are subject to a "new ground of rejection that is [not] necessitated by applicant's amendment of the claims" and the declaration of finality is contrary to section 706.07(a) of the M.P.E.P.. (Additionally, the cited new grounds are not the result of an information disclosure statement as described in the M.P.E.P..)

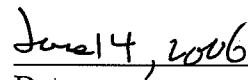
The grounds of these rejections in the current Office Action differ from those of the previous Office Action. The current Office Action states that all of these previous grounds were misprints; however, whether these were misprints or not, there were the ground that the previous Office Action presented. A response to an Office Action can only be made based upon the grounds that are presented, not upon grounds that were intended but not presented.

Therefore, the Office Action has rejected original claims on new grounds and, improperly, made the rejections final. Consequently, it is respectfully submitted that the finality of the Office Action is premature and should be withdrawn.

Respectfully submitted,



Michael G. Cleveland
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Date

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